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Intelligence Surveillance Court

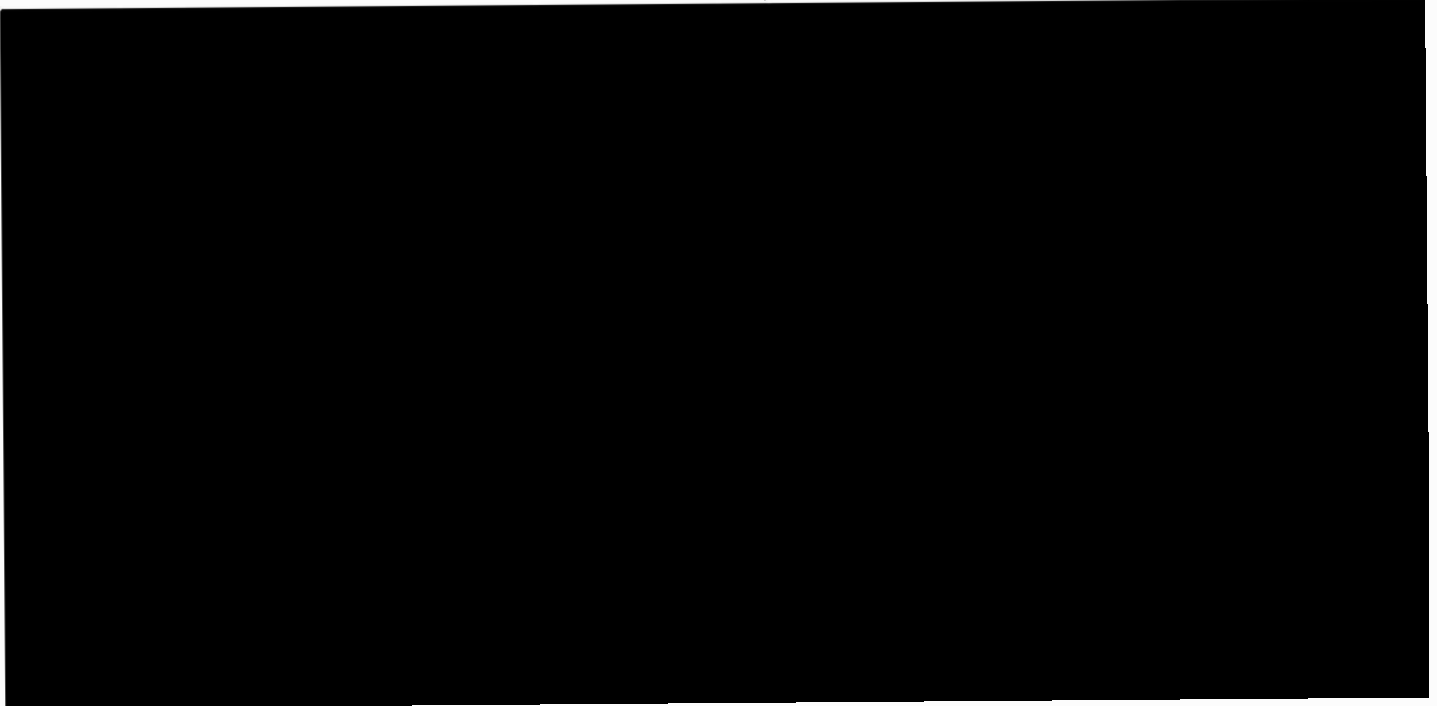
UNITED STATES

APR 05 2018

FOREIGN INTELLIGENCE SURVEILLANCE COURT

LeeAnn Flynn Hall, Clerk of Court

WASHINGTON, D.C.

**ORDER**

On March 27, 2018, the government [REDACTED] certifications and accompanying targeting, minimization, and querying procedures (“the 2018 Certifications”) pursuant to section 702 of the Foreign Intelligence Surveillance Act (FISA) as amended, codified at 50 U.S.C. § 1881a. The government had submitted versions of those certifications and procedures in draft form between February 8 and February 15, 2018.

The 2018 Certifications reauthorize certifications under section 702 that the government initially submitted on September 26, 2016, and amended in a submission made on March 30, 2017 (“the 2016 Certifications”). The Court approved the 2016 Certifications, as amended, on April 26, 2017. The 2018 Certifications also amend the 2016 Certifications, as well as predecessor certifications under section 702, to provide that information acquired pursuant to

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those certifications will be governed prospectively by the minimization procedures that accompany the 2018 Certifications. Now that the 2018 Certifications have been filed, the 2016 Certifications will remain in effect – even past their expiration date of April 26, 2018 – until the Court enters an order that either approves the 2018 Certifications and the use of the accompanying procedures, or finds a deficiency and directs the government to take remedial steps. See § 702(j)(5)(B). The Court is required, “simultaneously with the order,” to provide “a written statement of the reasons” for the Court’s action. § 702(j)(3)(C).

The Court is required to conduct its review of the government’s submission, and issue its order and statement of reasons within 30 days of the submission. See § 702(j)(1)(B). Thirty days from March 27, 2018, is April 26, 2018. The Court may extend this period, however, “as necessary for good cause in a manner consistent with national security.” See § 702(k)(2).

As the Court previously stated, based on its review of the drafts filed between February 8 and February 15, “it appears likely that this matter will present one or more novel or significant interpretations of the law, which would require the Court to consider appointment of an amicus curiae” under section 103(i)(2) of FISA, codified at 50 U.S.C. § 1803(i)(2). Docket Nos. [REDACTED]

[REDACTED] Order issued on March 20, 2018, at 2. The Court further stated that meaningful amicus participation would require the Court to extend the 30-day review period. See id. at 3. The Court ordered the government to

explain in writing whether an extension of time – and, if so, what length of an extension . . . – for the Court to review the 2018 Certifications . . . would be consistent with national security, taking into account that once the 2018 Certifications are filed with the Court, the 2016 Certifications and procedures will remain in effect for the duration of an extended review period pursuant to section 702(j)(5)(B).

Id.

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On March 26, 2018, the government timely filed a response to that Order, which advised that “the government assesses that an extension of 90 days . . . would be consistent with national security.” Docket Nos. [REDACTED] Government’s Response to the Court’s Order of March 20, 2018 (“Response”), at 6. [REDACTED]

After reviewing the 2018 Certifications and accompanying procedures in final form, together with the government’s explanatory memorandum, the Court continues to assess that this matter likely presents one or more novel or significant interpretations of law, the consideration of which would benefit from amicus participation. The Court further finds that the need for an extension to allow for such participation constitutes “good cause” under section 702(k)(2).

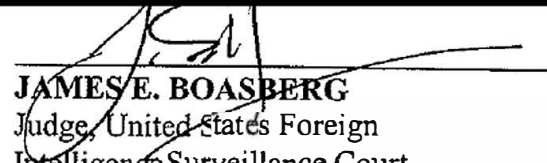
The Court therefore has decided to extend the period for Court review under section 702(j)(1)(B) by 90 days, the maximum period consistent with the government’s assessment of national security interests. The Court believes that full length of time will likely be necessary for meaningful amicus participation and is ordering it now to avoid [REDACTED]

Accordingly, it is HEREBY ORDERED that, for the reasons stated above and as necessary for good cause in a manner consistent with national security, the time period for the Court’s review of the 2018 Certifications and accompanying procedures under section 702(j)(1)(B) is extended, pursuant to section 702(k)(2), through July 25, 2018. As requested by the government, see Response at 7, the Court is simultaneously issuing a Notice of Extension for each of the 2016 Certifications.

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ENTERED this 5th day of April 2018, in Docket Nos. [REDACTED]


JAMES E. BOASBERG
Judge, United States Foreign
Intelligence Surveillance Court

[REDACTED] Chief Deputy Clerk.
FISC, certify that this document is a
true and correct copy of the original

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